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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/591,869	06/27/2007	Michel Bachmann	32201-01090	4530
35023	7590	06/02/2009		
Mitchell P. Brook			EXAMINER	
LUCE, FORWARD, HAMILTON & SCRIPPS LLP			DANG, PHONG SON H	
11988 EL CAMINO REAL, SUITE 200				
SAN DIEGO, CA 92130			ART UNIT	PAPER NUMBER
			3773	
			MAIL DATE	DELIVERY MODE
			06/02/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/591,869

**Applicant(s)**

BACHMANN ET AL.

**Examiner**

SON DANG

**Art Unit**

3773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 2 and 5-7 is/are pending in the application.
- 4a) Of the above claim(s) 7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-2 and 5-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-85/06)  
Paper No(s)/Mail Date 03/10/2009, 03/23/2009
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. The amendment filed 03/09/2009 has been entered. Claims 3-4 are cancelled. Claims 1-2 and 5-7 are currently pending in the application.

***Claim Objections***

2. Claim 7 is objected to because of the following informalities: Claim 7 depends on the cancelled claim 3. Therefore, claim 7 is withdrawn from further examination.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-2 and 5-6 rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5,658,298 to Vincent et al. (Vincent).

In Regards to claims 1-2 and 5-6:

Vincent teaches:

A surgically implantable adjustable ring for constricting a tubular organ, the adjustable ring (10, Fig. 2) comprising: an open ring body having closure system including a first (where 14 is, Fig. 2) and a second end parts (11, Fig. 2), the open ring body being designed to be closed around the tubular organ; the closure system constricting the tubular organ by closing the ring and forming the ring into a loop; and the first end part including a reinforcement structure and a sleeve (14, Fig. 2) having a first and a second portions (front and back of sleeve,

Fig. 2), the sleeve (14, Fig. 2) being designed to receive the second end part (11, Fig. 2), the sleeve (14, Fig. 2) being disposed in a substantially perpendicular direction in relation to the direction of the first end part (where 14 is, Fig. 2), the second part (11, Fig. 2) comprising a locking protrusion (12, Fig. 2) adapted to engage an aperture (15, Fig. 2) in the sleeve (14, Fig. 2), thereby securing the ring (10, Fig. 2) in a closed position. The second portion of the sleeve contains the aperture (15, Fig. 2), and wherein the second portion of the sleeve partially overlaps the second part (11, Fig. 2) when the ring (10, Fig. 2) is in the closed position. The sleeve (14, Fig. 2) being designed to receive the second end part (11, Fig. 2) and having a tab (18, Fig. 1) extending from the second portion, the sleeve (14, Fig. 2) being disposed in a substantially perpendicular direction in relation to the direction of the first end part (where 14 is, fig. 2), the second part (11, Fig. 2) comprising a locking protrusion (12, Fig. 2) adapted to engage an aperture (15, Fig. 2) in the sleeve (14, Fig. 2), thereby securing the ring in a closed position; wherein the tab (18, Fig. 1) comprises a portion (where the tab 18 is, Fig. 2) more flexible than the remaining portion of the tab (18, Fig. 2), the flexible portion being situated in the proximity of the aperture (15, Fig. 2), the flexible portion preventing an accidental opening of the closure system after the adjustable ring is disposed around the tubular organ. Flexible portion comprises an opening (16, Fig. 2).

***Response to Arguments***

5. Applicant's arguments with respect to claims 1-2 and 5-6 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SON DANG whose telephone number is (571)270-5809. The examiner can normally be reached on Monday-Friday 7:30 AM - 5:00 PM EDT.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on 571-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SD

/(Jackie) Tan-Uyen T. Ho/  
Supervisory Patent Examiner, Art Unit 3773